IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2123 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JUDGEMENTLAL @ JAJMALBHAI RAMSHARAN YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2123 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 20-12-2001 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mrs.S.J.Dave for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that four prohibition cases have been registered against the detenu and last case was registered on 20-10-2001 while the order of detention was passed on 20-12-2001 and there is a delay of two months in passing the order. Learned AGP has fairly admitted the same. In this connection, she has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the State Govt. through advocate on 28-1-2002 and it has been received by the State Govt. on 6-2-2002, same was communicated to the detenu on 13-2-2002 and hence, there is a delay in deciding the representation and communicating the same to detenu. In this connection, she has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

"The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

5. In the present case, it is to be noted that last offence registered against the petitioner was on 20-10-2001 whereas order of detention was passed on 20-12-2001 based on this offence and hence, there is a delay of two months in passing the order. It is also to be noted that though the representation dated 28-1-2002 sent to the State Government has been rejected by the State Govt. on 6-2-2002, same has been communicated to the detenu on 13-2-2002 and hence, there is a delay in deciding the representation and communicating the same to the detenu. No satisfactory explanation has been putforward by the concerned authority either for the delay in passing the order or for the delay in deciding the representation and communicating the rejection of his representation. Therefore, in view of the above judgments relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 20-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Judgemental Jajmalbhai Ramsharan Yadav is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.Dholakia,J.)
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